

# Congress of the United States

Washington, DC 20515

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June 15, 2018

The Honorable Ajit Pai, Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai,

We write in response to the Federal Communications Commission's (FCC) recent Public Notice seeking comment on the interpretation of the Telephone Consumer Protection Act (TCPA) following the decision by the D.C. Circuit Court of Appeals to strike down portions of a 2015 FCC rulemaking.<sup>1</sup> As you proceed with the Public Notice, we urge you to fulfill Congress's intent to protect the public from unwanted robocalls and robotexts from government contractors.

First, we request you swiftly adopt consumer protection regulations that restrict robocalls and robotexts from federal debt collectors. In 2015, Congress directed the FCC to allow callers collecting federal debt to robocall and robotext without consent the mobile phones of student loan borrowers, mortgage borrowers, veterans, farmers, taxpayers, and anyone else with debt backed by the federal government. These changes to the TCPA also require the FCC to issue implementing regulations and allow the FCC to restrict or limit the number and duration of robocalls and robotexts.

In August of 2016, the FCC issued implementing regulations and appropriately used its authority to adopt many important consumer safeguards, including:

- Limiting the amount of calls and texts to no more than three per month, counting each initiated call as one call;
- Notifying consumers of their right to request that calls stop and requiring that all callers cease the calls once any called party requests that the calls stop; and
- Restricting the calls and texts to those made just to borrowers – not their family or friends – and only for the purpose of collecting on delinquent or defaulted debt owed to the federal government.

Regrettably, the FCC withdrew these protections prior to their approval by the Office of Management and Budget. Further, according to a petition submitted to the FCC, some debt collectors are already making robocalls and robotexts without consumers' consent. As a result, it

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<sup>1</sup> *ACA Int'l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018)

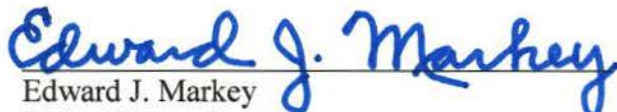
appears that many borrowers and their relatives may be receiving multiple robocalls a day without providing consent or having the ability to stop invasive communications.


We believe that borrowers should be protected by the robust protections established by the FCC in 2016. We urge you to fully implement these rules and take appropriate actions against any caller violating these key protections.


Second, we urge you to fully rescind the Broadnet et al. Declaratory Ruling without delay. In 2016, the FCC adopted the Broadnet et al. Declaratory Ruling, which determined that federal contractors are not "persons" under the TCPA, formally exempting them from complying with the TCPA's core consumer protections. We strongly oppose this conclusion in the Broadnet et al. Declaratory Ruling and believe that it was Congress's intent for the TCPA's protections to extend to government contractors. Congress demonstrated this intent by passing Section 301 of the 2015 Budget Act, which exempted federal debt collectors from the TCPA. While we oppose this carve out, its adoption is clear evidence that Congress believed that the TCPA already applied to government contractors. Therefore, we must ensure that government contractors are subject to meaningful rules that prohibit them from violating the consumer protections established by the TCPA by rescinding the Broadnet et al. Declaratory Ruling.

The FCC has an important role in protecting the convenience and precious zone of privacy created by the TCPA. We strongly encourage you to use your authority to stop these abusive and invasive robocalls.

Sincerely,

  
Edward J. Markey  
United States Senator

  
Michael S. Lee  
United States Senator

  
Anna G. Eshoo  
Member of Congress

  
Frank A. LoBiondo  
Member of Congress





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 23, 2018

The Honorable Edward J. Markey  
United States Senate  
255 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Markey:

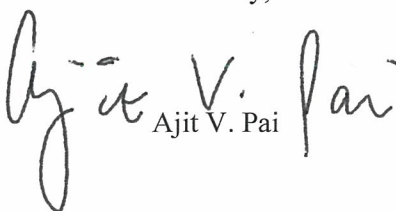
Thank you for your letter regarding the Telephone Consumer Protection Act (TCPA). Unwanted robocalls are consumers' top complaint to the FCC, and we have accordingly made combating illegal robocalls a top priority. We have aggressively enforced the TCPA as well as the Truth in Caller ID Act—leveling over \$200 million in proposed fines against illegal robocallers. In November, we authorized carriers to stop certain robocalls at the source, while we pursue creation of a reassigned numbers database and a robust call-authentication framework. And we have been working with our colleagues at the Federal Trade Commission as well, hosting a policy forum in March and a tech expo in April.

In your letter, you urge the FCC to protect the public from unwanted robocalls and robotexts from government contractors. As you recognized, the prior Administration stripped these consumer protections from the American public in the July 2016 *Broadnet* decision, which found that government contractors (including debt collectors) were not “persons” under the TCPA and therefore did not need to comply with its requirements. As I said in my dissent to that decision, this conclusion is inconsistent with the text and structure of, and Congressional intent underlying, the TCPA. Moreover, as a policy matter, it gave federal contractors a special carve-out from those restrictions. To be sure, federal contractors may be entitled to immunity from TCPA liability that derives from the government (that is, under common-law principles of agency), but that’s a matter for the courts and Congress to decide—not the Commission. And as I explained the following month, putting in place the rules required by the Budget Act amendments would do no good until *Broadnet* is overturned—if federal debt collectors need not comply with the TCPA (as *Broadnet* held), then they need not comply with rules implementing the TCPA.

Fortunately, the Commission is now poised to examine and reconsider these issues. In light of the decision of the U.S. Court of Appeals for the District of Columbia in *ACA International v. FCC* on key TCPA issues, the Commission sought renewed comment on reconsidering the *Broadnet* decision and the 2016 *Federal Debt Collection Rules*. We also sought comment on the interplay between the *Broadnet* decision and the Budget Act amendments. The comment and reply period closed on June 28, 2018, and Commission staff is now reviewing the record.

As we consider these matters, we will make every effort to ensure the Commission interprets the TCPA faithfully, protects consumers, and does not bestow regulatory largesse upon certain types of robocallers. Please let me know if I can be of any further assistance.

Sincerely,

  
Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 23, 2018

The Honorable Mike Lee  
United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Lee:

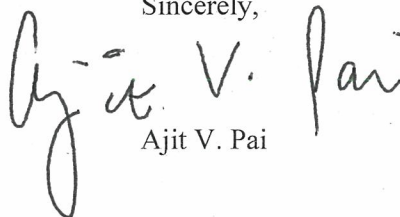
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
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July 23, 2018

The Honorable Anna G. Eshoo  
U.S. House of Representatives  
241 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Eshoo:

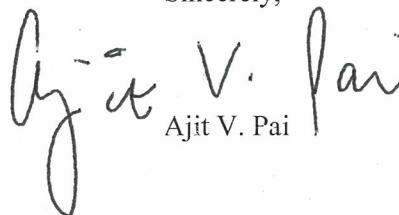
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July 23, 2018

The Honorable Frank A. LoBiondo  
U.S. House of Representatives  
2427 Rayburn House Office Building  
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Dear Congressman LoBiondo:

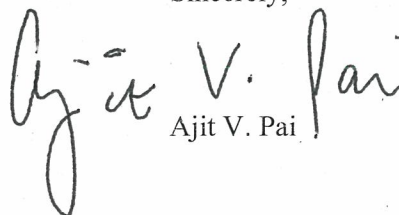
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